### **EXHIBIT B**

### License and Certificate of Water Right

Water License No. 4168

Water District No70	Priority_9-3-1908.
THIS IS TO CERTIFY that Americ	onn Falla Power Company
of Pocatello, Idaho	, made application for a permit to appropriate the
public waters of the State of Idaho, dated Septem	nbor 3 , 1900 ; that Permit No. 4168
was issued under said application; that Certificate of Co	completion of works, with a carrying capacity of 6000
second feet, was issued thereunder on Dece	ember 17 , 19 13 , showing that said works
were completed on the 26th day of Hove	ember , 1913 ; and that on the 28th
day of Bovember , 19 19	
lda)	ho Power Company
of Boise State of Lommissioner of Reclamation	dano , made proof to the satisfaction of the
Emicrical Control of the digital to the use of the	waters of Snake River
a tributary of Columbia River , for the pr	urpose of generating electric power
under Use Permit No. , . ,4168 of the	urpose of generating electric power of heolemation successfully and that said right to the use of said
waters has been perfected in accordance with the late Commiss loner of Reclamation Regiment of Idaho and entered of record in Volume's day of February , 19 20;	ws of Idaho, and is hereby confirmed by the cleans 5 of Licenses, at page 2529, on the 5th
The right hereby confirmed dates from	September 3 ,1908 :
The Point of Diversion is located	
1 1 1 1	7 S. R. 31 E. B.M.
•	
	is entitled and hereby confirmed, for the purposes
aforesaid, is limited to an amount actually needed and	l beneficially used for said purposes, and shall not
exceed 1400 cubic feet per second.	¥ , 1
Description and location of use: At the to	) '  ' num of Amerikan Walls : Tacho
Twp. Range Sec. Forty-sere Tract	No. Acres No. Acres Described in Permit Actually Irrigated
·	Tectany arrigated
CALL SIDE BLAIR	

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of

we berein described, as provided by the laws of Idaho.

"General residence of Heelengtian

WITNESS the stal and signature of the Espainization affixed at Roles, Idaho, this 5th day of Pehruary , 10 gr)

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### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

对这种原始和自己的特殊的特殊的人的

IN RE THE GENERAL ADJUDICATION.	CIVIL CASE NUMBER:	39356
OF RIGHTS TO THE USE OF WATER FROM	Date Received	
	Receipt Number	
NOTICE OF C	TATM	
entitional foliage by the law functions (2004 VIA) is	<u> </u>	Train (MW)
WATER RIG ACQUIRED UNDER S	FHT	unista e participation de la companya della companya de la companya de la companya della company
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Please type or print clearly the second seco		
1. Name of Claimant (s) Idaho Power Company		
Mailing Address aggresses P.O. Box: 70, Boise, Idaho	<u>าวทางทาง รัฐมา</u> นอย่าง ทั้งรับตั้งสมุ อาหารว่า อาหารการ ค <b>ะวิวิท</b> าล <b>(8</b> 3	родила (199 3 <b>702</b> s — меду
2. Date of Priority (Only one (1) per claim) September 3, 1	908 Charles to the control of the co	
Source of water supply (a) Snake River		
which is tributary to (b) Columbia River		
4. a. Location of existing point of diversion is: Township	Range 31K Section	30,
1/4 ofSW _ 1/4 of SE 1/4 , Govt. Lot,	B.M., County of Power	
Additional points of diversion if any:	A STATE OF	
<ul> <li>b. If instream flow, beginning point of claimed instream flow is:</li> </ul>	·	
Township Range Section	1/4 of 1/4 of	1/4,
Govt. Lot 12-12-B.M.) County of mass 1.3 (Bernstein, 1.3.1).  2010 once 1.3 (Bernstein and Jacob 1.4.2). Lossons	S. Martin, Phys. Lett. 10, 127 (1997), 1849, 1851. S. Martin, E. S. Martin, Phys. Rev. B 1979, 18790, 1879, 1879, 1879, 1879, 1879, 1879, 1879, 1879, 1879, 1879, 18	
ending point is: Township Range S		
1/4, Govt. Lot B.M., County of	provided the second of the sec	egitagide italieki <del></del>
<ol> <li>Description of existing diversion works (Dams, Reservoirs, Ditch including the dates of any changes or enlargements in use, the constructed and as enlarged and the depth of each well.</li> </ol>	nes, Wells, Pumps, Pipelines, Headga dimensions of the diversion works as	es , Etc),
		· in its
N. 947	<u> </u>	namanan 1 4

Munitus 1996 Court Stalling Mr. S. C. C.

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Det	scriptio	n of p	lace of	use:								1 AT							
a.	If water	is for	irrigati	on. Ind	icate	acreaç	ge In e	ach s	ubdivi	slon ir	the ta	bulati	on be	low.	4.195	`. 	· 20		
b.	If water	is us	ed,for o	other p	urpos	es, pla	ice,a,s	ymbo	ol of us	e (exa	imple:	D for	Dome	stic)	.uf 1, 10	, i,,			
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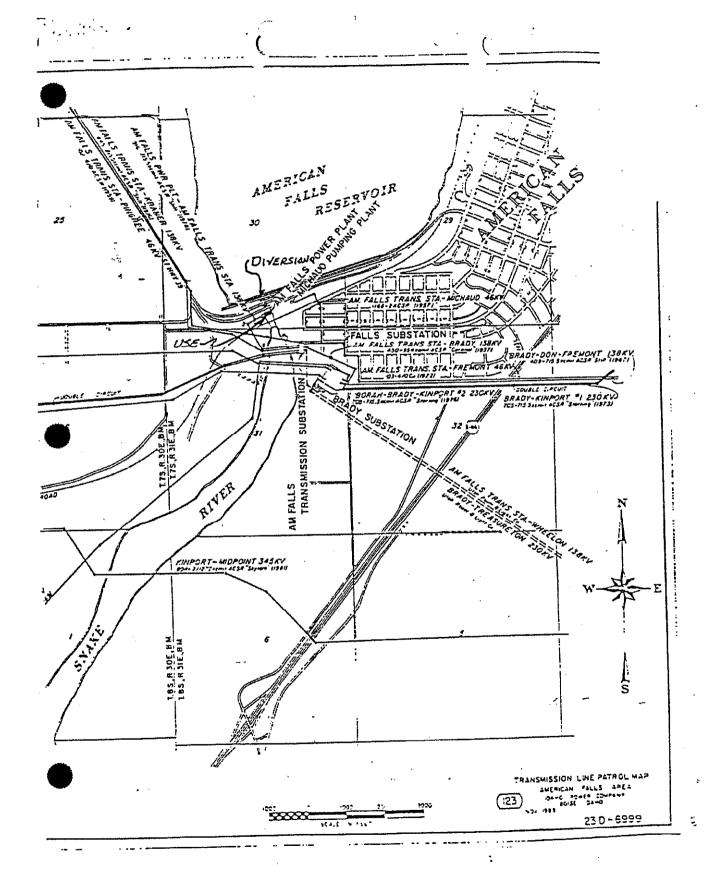
Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

(SEE ATTACHED)

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Last Name Idaho Power Company Ident No. 01-02017 Copies: White-State, Yellow-Claimant



•		License X Permit
If applicable provide IDWR Water	ree Right Number01-02017	
Court	Case Number	Decree Date
Plaintiff vs Defendant		
"How you will receive notice in the wish to receive and pay a small as Number of attachments For Individuals: I do solemnly swear of	owledge that I/We have received, readle Snake River Basin Adjudication." (but the form monthly copies of the down affirm that the statements contained	o.) I/We do do not ocket sheet.
and correct. Signature of Claimant (s)		Date
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For Organizations: I do solemnly swe	ear or affirm that I am Attor	ney
		Title
Of <u>Idaho Power Company</u> Organizati	an .	, that I have signed the foregoing
document in the space below as	Attorney	of Idaho Power Company
and that the statements contained in th	1 fue	Organization
*		Oliect.
Signature of Authorized	Agent	1000
Title and Organization	Attorney, Idaho Power Comp	any Date 10-18-96
State of Idaho/or	) ss. )	(0 + 1
Subscribed and sworn (or affirmed) be	fore me this	day of October 19 96
SEAĻ	Notary Public	you sart Steuklan
	Residing at Soo	
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, 8	My Commission Expire	es <u>12-17-97</u>
	Please Print Name	
MORCE IS HELEDA GIACH MICH.		will be acting as attorney at law on beha led by the director to the claimant signing abov
Signature		•
Address P.O. Box 1906, T	win Falls, Idaho 83303-190	
ate 10-18-96		
ate /0-18-96	<u> </u>	

Last Name \_\_Idaho Power Company | Ident. Number \_\_\_01-02017

### State of Idaho

### icense and Certificate of Water Right

Water	Liconse	No. 14067
Water	District	No. 36

Amount 4,600 Priority 3-8-1919 .

THIS IS TO CERTIFY Bed Idaho Power Company . , made application for a permit to appropriate the Bolne, Adaire public waters of the State of Idaho, dated March 6 , 19 19; that Permit No. 14067 was bested under said application; that Certificate of Completion of works, with a carrying capacity of 4 GGES second feet, was issued therounder on July 21 ...., 19 24, showing that said works July , 19 24; and that on the 1st was completed on the lat day of dry of July

### Idaho Power Company

, made proof to the satisfaction of the ,State of Idaho Dotse of Idaho, of the right to use the waters of Snaks River Commissioner of Reclamation , a tributary of Columbia River , for the purpose of power

, under Use Permit No. 14067 of the Commissioner of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in of Licenses, at page 3175, on the 21st day of July , 19 24:

, 1019 ; The right hereby contirmed dates from March 8

The Point of Diversion is located

, Tp. 7 S. , R. 31 B. 14. Sec. 20 in the SW 148E

County of lower.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and heactically used for sold purposes, and shall not exceed 4.600 grille fent per necotul.

Description and location of use:

Twp.	Rango	Sec.	Forty-pop Tract	No. Agrei Déscriped de Egrait	No. Acres Actually Lerigated
	4		That the water in American store purposes, a region of the store of th	on, on the east ber, in bot 1 ch	
:				Mary American	

The right to the use of the water storessld hereby confirmed is restricted to the lands or place of use herein described, at provided by the laws of Idaho. 

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, .19 E4. July 21st this

W. C. SWEEDSEIL

State of Idaho Department of Water Administration  LICENSE OF WATER RIGHT  LICENSE OF WATER RIGHT  LICENSE OF WATER RIGHT  LICENSE OF WATER RIGHT  Amount	ermit 3 tt the
Department of Water Administration  LICENSE OF WATER RIGHT  LICENSE OF WATER RIGHT  LICENSE OF WATER RIGHT  Amount 16635/01-2046 Priority Oct. 15, 1928 Amount 2,000  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  THIS IS TO CERTIFY, that IDAHO POWER COMPANY  LICENSE OF WATER RIGHT  LICENSE OF WATER RICHT  LICENSE OF WAT	ermit 3 tt the
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Boise, Idaho has complied with the terms and conditions of Period 160. 16635/01-2046 issued pursuant to Application for Permit dated October 15, 1926 and has submitted proof to the Department of Water Administration on January 18, 1933 that he has applied water to a beneficial use; an examination by the Department indicates that works have a capacity of 9,000 cfs and that the water has in fact been applied to pencificial use; a right to the use of water from the Snake River tributary of the Columbia River , is hereby confirmed in the following amounts amount 2,000 cfs for privar from Jan. 1 to Dec. 31 tooth dates incompany from to the following amounts for from to to the dates incompany to the dates inc	t the
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Subject, however, to the condition that no more than 2,000 of s of water be divert	icu as
any one time, said waters to be diverted within the	
in the county of, and that the amount of water so diverted and to whi	ich such
right is entitled and confirmed is for the purposes aforesaid and is limited to the amount wi	hich can
actually be beneficially used and shall not exceed 1,447,590 acre feet per year 88	<del></del>
axxedeeboonesetx	
Description and location of place of use: American Falls Project	
TWP. RANGE SEC. HELV NAWL SEW NELVE NAWL SWA SEW NELVE NAWL SWA SEVE NEW SEW SEVE	TOYAL
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Total number of acras irrigated	
rotal Unitmes of error miles	
The right to the use of the water hereby confirmed is restricted and appurtenant to the	e lands
•	
or place of use herein described, as provided by the laws of Idaho.  Witness the scal and signature of the Director, affixed at Boise, Idaho, this 23	day of
Withese the seat that significate of the Director,	-
December 19 71	

### DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Annex 2 Boise, Idaho 83707 (208) 384-2215

December 9, 1971



Director

Water Rights Administration Water Resource Investigations Dam and Reservoir Safety Water Well Drilling Flood Plain Management Irrigation and Flood Control Districts

Idaho Power Company Box 30 Boise, Idaho 83707

Gentlemen:

				ın examinatio	n of the	works	covered	by your
Permit No.	16635/01-20	46 and has fo	und the f	ollowing:				

Quantity of water diverted: 9,000 cis
Amount of water that can be recognized as beneficially used under Idaho law: 2,000 cfs
The maximum quantity diverted shall not exceed 1,447,590 acre fee per season.
Beneficial Use: Power generation purposes within the NW4NE4, Sec.
31, Twp. 7S, Rge. 31E, B.M. (American Falls Project)
Point of diversion: SW4SE4, Sec. 30, Twp. 7S, Rge. 31E, B.M.
The priority date established is: October 15, 1926

If you do not concur with these findings, please advise us within 10 days; otherwise, a license will be issued as set forth in this letter.

Very truly yours,

BOBBY D. FLEENOR Assistant Director

BDF:DR



### STATE OF IDAHO DEPARTMENT OF WATER RESOURCES APPLICATION FOR PERMIT

### . To appropriate the public waters of the State of Idaho

1.	Name of applicant Idaho Power Company Phone 388-2300
	Post office address P.O. Box 70, Boise, Idaho, 83702
2.	Source of water supply Snake River which is a tributary of Columbia River
3.	Location of point of diversion is ¼ of \$\frac{\subseteq}{\subseteq}\$ 4, Govt. Lot
	Sec. 30 Township 7S Range 31E B.M. Power County; additional
	points of diversion if any:
4,	Water will be used for the following purposes:
	Amount 7,850 cfs Power purposes from 1/1 to 12/31 (both dates inclusive)
_	Amount for purposes from to (both dates inclusive)
Ų.	Amount for purposes from to (both dates inclusive)
	Amount for purposes from to (both dates inclusive)
5.	Total quantity to be appropriated is (a) 7,850 and/or (b) acre feet per annum
	Proposed diverting works:
	a. Description of ditches, flumes, pumps, headgates, etc. American Falls Power Plant
	100
	b. Height of storage dam feet; active reservoir capacity acre-feet; total
	reservoir capacity acre-feet; period of year when water will be diverted to storage:
	toinclusive.
	c. Proposed well diameter is inches; proposed depth of well is feet.
_	d. Is ground water with a temperature of greater than 85°F being sought?
	If well is already drilled, when?; Drilling firm;
	Well was drilled for (well owner)
7.	Time required for the completion of the works and application of the water to be proposed beneficial use is
n	visting project warm (minimum 1 year)

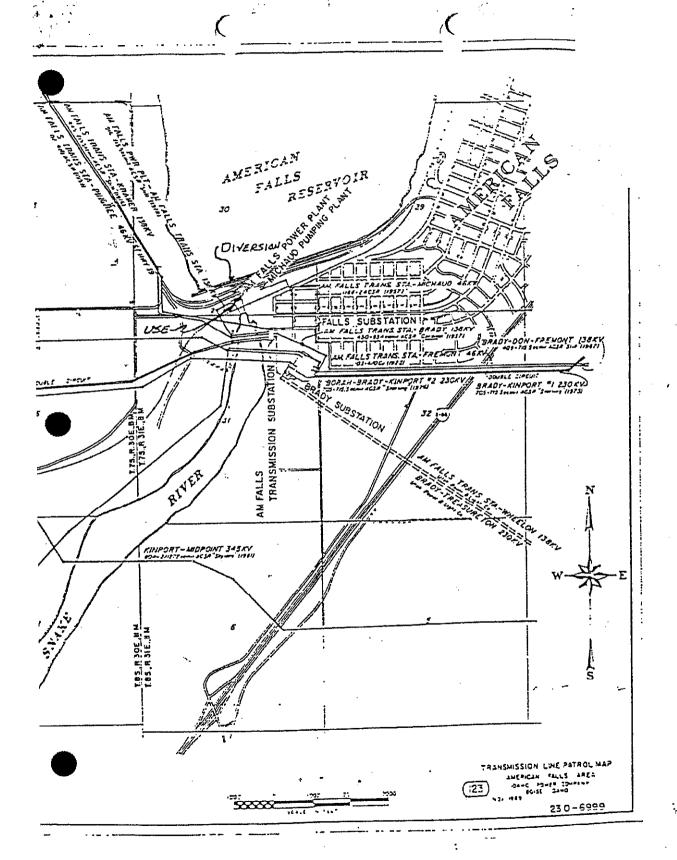
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3.	Descr	iption	of pro	pose	d use:	s ( <i>if ir</i>	rigati	็อก อก	ly, go	to ite	em 9 ;	):								
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10.	Descri	be any	othe	r wat	er rig)	nts us	sed fo	r the	same	purp	oses	as de:	scribe	d abo	ove	)1-02	2046;	01-	02017;	
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American Falls nlant

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number. (SEE ATTACHED)

Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth. IDAHO POWER COMPANY



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			Preliminary check by	
<u>Fe</u> e \$	Receipted by	##	Date	
rablication prepared by_	Da	te	Published in	
Publication approved			Date	
ACTION	OF THE DIRECTOR,	DEPARTMEN	NT OF WATER RESOURCES	.•
This is to certify that	I have examined Applic	ation for Permit	to appropriate the public waters of the	State of
Idaho No.	, and said	l application is h	ereby	
1. Approval of said appl				
a. SUBJECT TO ALL	PRIOR WATER RIGHTS.			
b. Proof of construct	ion of works and applica	ation of water to	beneficial use shall be submitted on c	or before
		•		
c. The rate of diversi- water rights for th	on, if water is to be used e same land shall not ex	for irrigation un ceed 0.02 cubic	der this permit, when combined with all feet per second for each acre of land.	
rights to the use o	f water, other than hydro	DOWEI, WILLIAM	er purposes shall be junior and subordin he State of Idaho that are initiated later y right or claim against any future rights laho initiated later in time than the priori	to the
e. Other:				

### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF WATER FROM THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NI Ident. Number	UMBER: _Aol-10382_	39576
Date Received	<u> </u>	,
Receipt Number	The March 1990 at	

### NOTICE OF CLAIM To an interest with the ${f TO}({f A})$ , which is always for ${f v}$ , which

## WATER RIGHT ACQUIRED UNDER STATE LAW

Please type or print clearly	٠.	•	4.00	
Name of Claimant (s)	Idaho Power Company		Phone (208 ) 383-26	570
Mailing Address P. (	O. Box 70	Boise, Idaho	Zip <u>83707</u>	
2. Date of Priority (Only one (	1) per claim) <u>July 15.</u>	1901		
3. Source of water supply (a)				
which is tributary to (b)	Columbia River			
4. a. Location of existing point	t of diversion is: Township	7S Range _	31E Section 30	*
1/4 ofSW 1/4	f of <u>SE</u> 1/4, Govt. Lot,		Power Power	
Additional points of diversi	on if any:		t in the	
b. If instream flow, beginning	ng point of claimed instream	flow is:		,
Township Rar	nge Soction		/4 of 1/4 of	_1/4
Govt. Lot B.M., Co	unty of			٠
ending point is: Township	Range	Section	1/4 of	1/4 of
	B.M., County of			· .
<ol> <li>Description of existing diver- including the dates of any cl constructed and as enlarged</li> </ol>	sion works (Dams, Reservoi hanges or enlargements in u d and the depth of each well	iso the dimensions of the	والمستمر والمستمر والمستمر والمستمر والمستمر والمستمر والمستمر والمستمر والمستمر والمستمر والمستمر والمستمر	; ;),
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Map of Project: show clearly the point of diversion; place of use, section number, township, and range number.

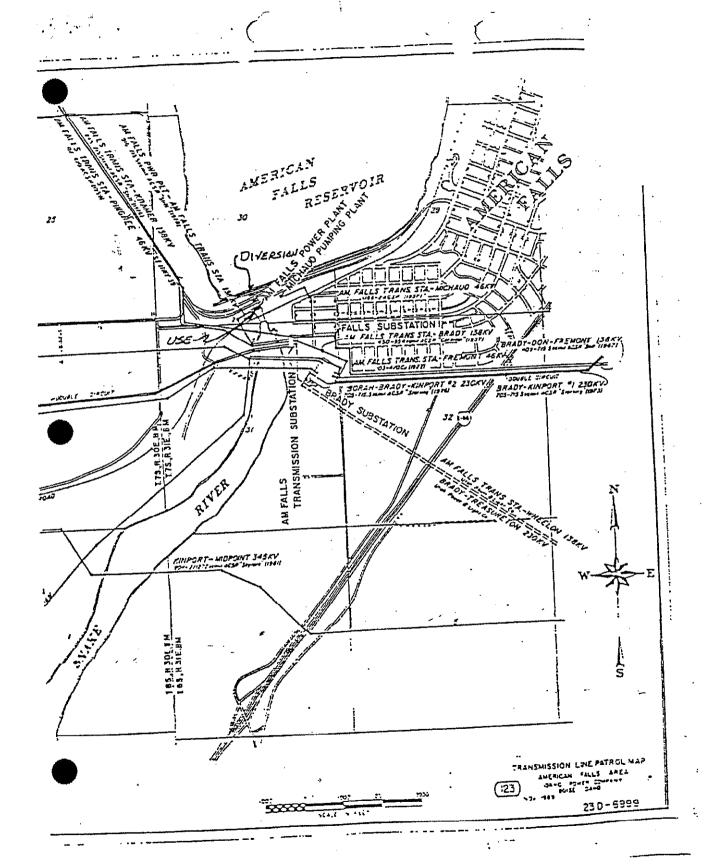
Scale: 2 inches equais 1 mile

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	Basis of Claim (check one) Beneficial t	Book 4. Wa	ter Rights. Pø	.266, Blaine County (Exhibi
	If applicable provide IDWR Water Right I	Number <u>Certifica</u>	<u>te of Wat</u> er Ri	ght Transfer#464 (Exhibit B
}	Court	Case Number		_ Decree Date
	Plaintiff vs Defendant			
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and (	correct. Signature of Claimant (s)			Date
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Cour Subs 17. I Notic of the shou	Notice of Appearance: ce is hereby given that I,	Notary Public Residing at My Commission Please Print Name Tucker ces required by law to below.	day of	October 19 96  Hart Africkland

Copies White-State, Yellow-Claimant

Last Name Idaho Power Company Ident. Number

of day that he is of lawfiel go and the appropriated of the Natur Right described in the within a riginal notice, of which the foregoin as fasted in a conspicu out of intended diversion at 7:15 sielock P.M. the frist by of sugar M. bed and sworn to before me this is day of agust 1901. a.L. Richardson, Clark of the Black Cours, withing States. heribed and sworn to before in dy at 1 Helockom, august 12, 1901. M. E. Heard, County Recorder. Recorded at request of HAR. By Sea W. Level, Smale River water of Snicke River there ship 7 South, Range 31 East, Down Merch The purposes for which I claim the water are: machine for generating elective Bounty, Daho.
The general course length, destination and condit by which I propose to divid said water is at follows; The place where I intend to vice the water is alacre for mechanical furfices by a turnel to feet, more o be in length, running partly through Section 30 and T. 7 S. C. 31 8. B. M., and by the phic 185 feet, more or less in length, for fumping purposes in the above named bettone For irrigation, by meaned of open canale 15 feet wide by 3 feet deep, punning northerh and boutherly about 15 miles in length to irrigate all the lands in Section 1314 23, 21, 26, 35 and 36, in Township & South, Pange 3coses, Daise dian; also Sectione 1, 2, 9, 10, 11 and 16, in Townships South,

Cange 30 das, Doiso Meridian; also Sectione 19, 30 and 31 in Township 7 South, Range 3/Best Baise meridian. That it is my intention to fully possificance in I all the amount of water herein claimed in sompliance in the Statute of the State of Jodaho providing forthe appropri and diversion of water, Andrew J. Jarket. Dated this 15th day of July, 1901. Recorded at request of Congers at 2 o'slock PM, July 17, 1901. Pagles OM Bood.

Tate of Blaine, 68, until all concerned notice is hereby given. That John Trombe; John H. Clende TJ37.C238! B.M. The length of the proposed said is about 12 miles. Of is intended to we said water for wrighting described to on the above described land.

all the amount of water herein slave established of the State of Adaho provided Dated this 15th day of July, 1901, ayberak Frod. Deputy. ate of Odaho, 60,

( -B-AM.F.-W.P

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Certificate of Water Right
Transfer Right No. 464

This is to certify that Idaho Power Company, a corporation of the State of Maine, qualified to do business in the State of Idaho, claims a right to the use of 253 o.f.s. of the waters of Snake River for power purposes, initiated and perfected under and by wirtue of that certain water location notice by Andrew J. Tarbet, dated July 15th, 1901, and recorded in Book 4 of Water Rights at Page 266 in the records of Blaine County, Idaho, now situated in Water District #36 of the County of Power, State of Idaho, to-wit, at the hydro-electric generating station on the west side of Snake River at American Falls, Power County, State aforessid, sometimes known as "West Side Plant"; that Idaho Power Company has become the owner of the said water right by mesne conveyances and was until recently the owner of said West Side Plant: that the waters covered by said water right were diverted from said stream in the South Half of the South Half (SaSa) of Section 30, Township 7 South, of Range 31 K., B.M., and conducted to the said West Side Plant and there used; that the said Company discontinued the use of said waters of the said water right as used at the said West Side Flant in June, 1927, and established a new place of use for such water on the east side of Snake River at American Falls, County and State aforesaid, at what is commonly known as the insrican Falls East Side Power Plant of Ideho Power Company; that the new point of diversion of said waters is Worth 59 degrees 30 minutes West 1872.3 feet from the Southeast Corner of Section 30, in Township 7 South, of Range 31 K., B.M., and such waters are conducted to said new place of use through the forebay of the American Falls East Side Power Plant of Idaho Power Company.

That upon the application of said Idaho Power Company for a transfer of water right made before the Commissioner of Reclamation of the State of Idaho, and said application having been granted, the right to the use of the said 253 o.f.s. of waters so initiated and perfected by and under said water location notice at the said new place of diversion and said new place of use be, and the same hereby is, acknowledged; that the right to the use of the waters 'aforesaid hereby acknowledged is restricted to said American Falls East Side Power Plant of Idaho Power Company, as provided by the laws of the State of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation of Idaho at Boise, Idaho, this 17th day of June, 1929.

### STATE OF IDAHO, DEPARTMENT OF REGLAMATION

In the Matter of the Application of Idaho Power Company for Transfer of Water Right, Water District No. 36.

٠î.

ORDER CRANTING TRANSFER

WHEREAS, on the 10th day of June, 1929, at the Department of Reclamation of Idaho, at Boise, Idaho, the matter of the application of Idaho Power Company for a transfer of water right dame on regularly for hearing, pursuant to the published notice; and

WHEREAS, no one appeared at the hearing to protest the application, and the evidence submitted by the Applicant in support of its said application shows that no one shall be injured by said transfer; and

WHEREAS, the Matermaster of the district in which the old and new points of diversion and of use are located has approved said application;

IT IS, THEREFORE, HERREY ORDERED that the said application for transfer of 255 c.f.s. of the waters of Snake River be granted and certificate issue to the Applicant herein; and

IT IS, THEREFORE, HERREY FURTHER ORDERED that due notice of the hearing of said application has hereby been given.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office at Boise, Idaho, this 17th day of June, 1989.

Commissioner of Anglamation

### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE N	JMBER:		39576	
Ident. Number	<u> </u>	0.38-		
Date Received				
Receipt Number				•

### NOTICE OF CLAIM TO A WATER RIGHT

ACQUIRED UNDER STATE LAW

Please type or print clearly		
. Name of Claimant (s)	Idaho Power Company	Phone (208 ) 383-2670
Mailing Address	P.O. Box 70 Boise, Idah	o Zip 83707
2. Date of Priority (Only one	(1) per claim) August 1, 1901	
3. Source of water supply (a which is tributary to (b)	Columbia River	
1. a. Location of existing point	nt of diversion is: Township7S	Range 31E Section 30
1/4 of <u>\$\text{\$\text{W}}</u>	'4 ofSE_SIF4 , Govt. Lot, B.M.,	County of Power
Additional points of divers	ion if any:	
- b. If Instream flow, beginn	ing point of claimed instream flow is:	· · · · · · · · · · · · · · · · · · ·
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Last Name

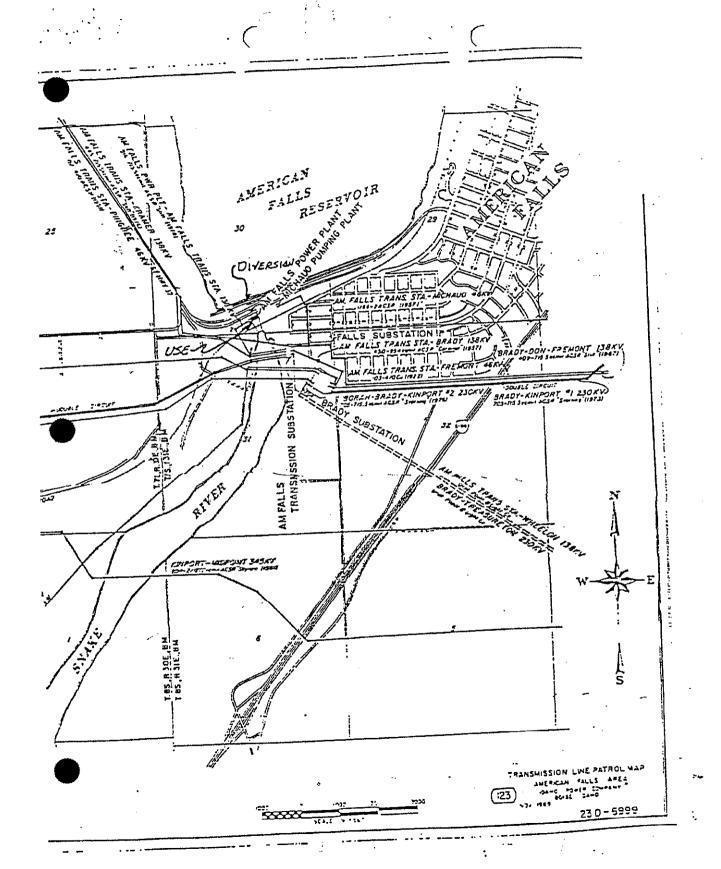
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Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

(SEE ATTACHED)

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15.	Basis of Claim (check one)	Beneficial Use Decree	Posted Notice	X Licen	se Permit	(bit A)
	If applicable provide IDWR	Water Right Number.	Certificate	of Water R	ight Transfer	No.463(Exhibit
	Court Plaintiff vs Defendant	Case N	Number		Decree Date _	
16.	(a.) By signing below, I/We "How you will receive notic wish to receive and pay a s	e in the Snake River B mall annual fee for m	lasin Adjudication." onthly copies of the	(b.) I/We do docket sheet.	do not	<u> </u>
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and	that the statements containe	d in the foregoing doc	cument are true and	correct.		
	Signature of Auth	orized Agent		? (u		
						10-18-91
	Title and Organiz	ation Attorney,	idano Power C	ompany	Date	101016
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	Idaho Power	Companyldent. Numb				
Las	st Name	vident. Numb	er	:	Copies White-State	e, Yellow-Claimant

a true and court copy in a conspicuous place areas the ha of intended direction described in said tratice to-write at West end of O.S. L. R.R. Bridge about 4 rocks to the right of track on fine port at bank of rivel. 6.18. Randall. Subscribed and severe to before me this 19 day of march 19. : W. a. Johnson

. Justier of Reaco Recorded at Request of Les Ingusoll for march 30. 1901 at 32 oct W. E. Heard bounty Recorder.

By les a Mised Deputy.

Snake River. Notice of Water Right Location notice it hereby given, that J. Grady of the City of Cocatello, County of Burnock, State be First, day of august, 1901, approp harticularly described as follows, towit; It the head of the island of the Q. Quy Bridge, at amorice Falls, Itaho and on the line of mida and Claime Bounts. That the special furfact It fireface for which said is The place of intended ine is the Bity of Procatelle as may require the use of water for the above nameds That the general prince of the proposed panalove it on each side of the Snake Rivery for such distance as n That it is introded to complete the be required. The length of said proposed panel or conduit is affer live years. a copy of this notice was duly facted ators the faint of intended Liversion, on the First day of august, 1901. Witness my hand at Pocatello, County of Bannock, Sta Alaho, this 11th day of august, 1901.

I say that he is of lawfil ago and the appropriator al notice, of which the foregoing is at true was fosted in a conspicuous place at point of intended diversion at 7:15 or alock P.M. the first day of buyant M. J. H. Brady. Subseribed and sworm to before me this 10 day of agust 1901. Soul a. S. Richardson; black of the Wallist Court, withint of Haho. Recorded at request of Horady at relockom, august 12, 1901.
By Sent Rosed, edy at Nelsekom, way. W. E. Kard, County Recorder. By Sea A To Level, Deputy. Snake River and of water. have J. Tarket, of Salt Lake Rity, water of Snicke River there State of Stan, do a flowing six tho 1(6,000) Rich I at which dieter to divert said water is american Falls, Blaine Porther States in Lot 12, Section 30, Township 7 South, Range 31 Est, Drie men The purposes for which I claim the water are: Ight, for propelling primaries in it, For peopelling of domestic purposes. The place where I rutent to view the water is, Blaine Courty daho. The general course, length, destination and conduit by which & propose to divert said water is al follows; for mechanical purpose to divid said water is at follows; but in length, running farty through section 30 and 31. 5.7 S. P. 3, B. D. M., and by the fife 185 feet, more or less in length, for fumping furfaces in the above named Sections. Township and Ran For irrigation, by meanly of few canaly 15 feet wide by 3 feet deep, running northerly and Southerly about 15 miles in length to irrigate all the lands in Section 1314 23, 24, 26, 35, and 36, in Township 7 South, Panger 30 Bast, Caise Meridian; also Sectione 1, 2, 9, 10, 11 and 16, in Townships South,

\*

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Certificate of Water Right
Transfer Right No. 463

This is to certify that Idaho Power Company, a corporation of the State of Maine, qualified to do business in the State of Idaho, claims a right to the use of 511 clf.s. of the waters of Snake River for power purposes, initiated and perfected under and by virtue of that certain water location notice by J. H. Brady, dated August 1, 1901, and recorded in Book 4 of Water Rights at Page 265 in the records of Blaine County, Idaho, now situated in Mater District #36 of the County of Power, State of Idaho, to-wit, at the hydro-electric generating station on the 1sland in Snake River at American Falls, Power County, State aforesaid, sometimes known as "Island Plant"; that Idaho Power Company has become the owner of the said water right by meane conveyances and was until recently the owner of said Island Plant; that the waters covered by said water right were diverted from said stream in the South Helf of the South Half (Sigsi) of Section 30, Township 7 South, of Range 31 K., B.M., and conducted to the said Island Plant and there used; that the said Company discontinued the use of the said waters of the said water right as used at the said Island Plant in June, 1927, and established a new place of use for such water on the east side of Snake River at American Falls, County and State aforesaid, at what is commonly known as the American Falls East Side Power ) Plant of Idaho Power Company; that the new point of diversion of said waters is North 69 degrees 30 minutes West 1872.3 feet from the Southeast Corner of Section 30, in Township 7 South, of Range 31 E., B.M., and such waters are conducted to said new place of use through the forebay of the American Falls East Side Power Plant of Idaho Power Company.

That upon the application of said Idaho Power Company for a transfer of water right made before the Commissioner of Reclamation of the State of Idaho, and said application having been granted, the right to the use of the said fill o.f.s. of waters so initiated and perfected by and under said water location notice at the said new place of diversion and said new place of use be, and the same hereby is, acknowledged; that the right to the use of the waters aforesaid hereby acknowledged is restricted to said American Falls East Side Power Plant of Idaho Power Company, as provided by the laws of the State of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation or Idano at Boise, Idaho, this 17th day of June, 1929.

Commissioner of Reclamation

### STATE OF IDAHO, DEPARTMENT OF REGLAMATION

In the Matter of the Application of Idaho Power Company for Tronsfer of Water Right, Water District No. 36.

. 3

ORDER GRANTING TRANSFER

WHEREAS, on the 27th day of May, 1929, at the Department of Reclamation of Idaho, at Boise, Idaho, the matter of the application of Idaho Power Company for a transfer of water right came on regularly for hearing, pursuant to the published notice; and

WHEREAS, no one appeared at the hearing to protest the application, and the evidence submitted by the Applicant in support of its said application shows that no one shall be injured by said transfer; and

MHERRAS, the Watermaster of the district in which the old and new points of diversion and of use are located has approved said application;

IT IS, THEREFORE, HEREBY ORDERED that the said application for transfer of 611 c.f.s. of the waters of Snake River be granted and cortificate issue to the Applicant herein; and

IT IS, THEREFORE, HEREBY FURTHER ORDERED that due notice of the hearing of maid application has hereby been given.

IN WITHESS WHEREOF, I have hereunto set my head and effixed the official seal of my office at Hoise, Idaho, this 17th day of June, 1929.

Commissioner of Reclamation

OIL.

# WATER RIGHT NO. 01-10384

### IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

## IN RE THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF WATER FROM THE SNAKE RIVER BASIN WATER SYSTEM

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Ident. Number	HO(-10	<b>5</b> 84	
Date Received		1	
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### NOTICE OF CLAIM TO A WATER RIGHT

### ACQUIRED UNDER STATE LAW

Please type or print clearly  1. Name of Claimant (s) Idaho	Borrow Company		Phone ( ooo) nee	,
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Mailing Address P. O. Box 7	<u> </u>	Boise, Idaho	2 P. 83707	7
2. Date of Priority (Only one (1) per c	laim) <u>January 1.</u>	1929		•
3. Source of water supply (a)Sna	ke River			
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4. a. Location of existing point of dive	rsion is: Township	7SRange	31E Section 30	· · ·
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ending point is: Township		4		1/4
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1/4, Govt. Lot B	J.M., County of		-	<b>-</b>
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constructed and as enlarged and t	he depth of each we	<sup>ll.</sup> American Falls	Power Plant	
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Last Name Idaho Power Company Ident No.

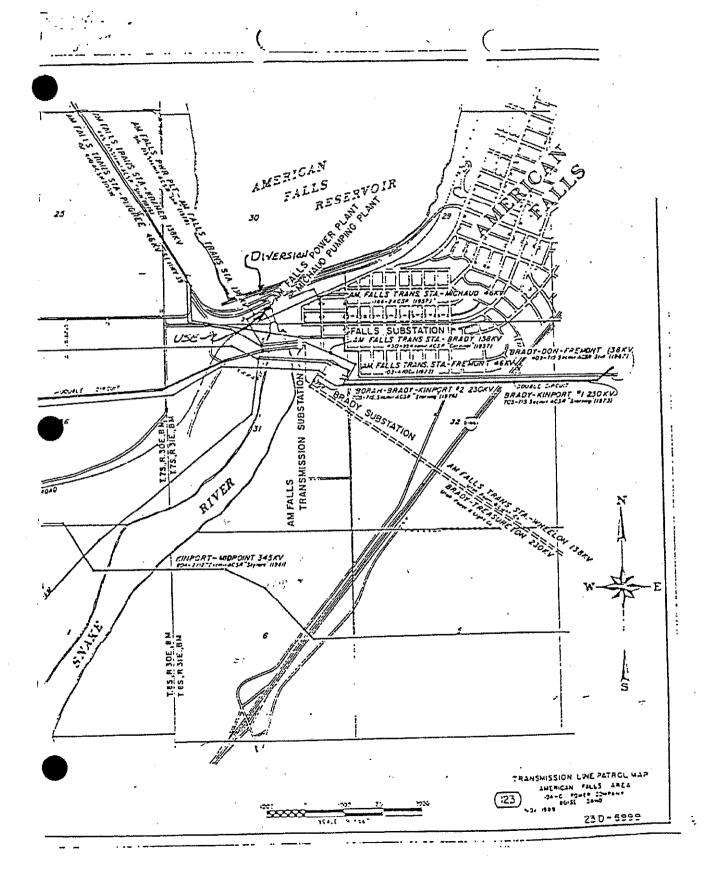
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Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

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15.	Basis of Claim (check one)		X	Posted Notice _	License	·	Permit
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	Court	Ca	se Nun	nher		Decree	Date
	Plaintiff vs Defendant					DOUICO	
16.	Signature (s) (a.) By signing below, I/We "How you will receive notice wish to receive and pay a significant signi	e in the Snake Riv	er Basi	n Adjudication." (	b.) I/We do _		
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17	Notice of Appearance:	Pleas	e Print N	attie			
	ice is hereby given that i,	James C. Tuo	ker		will be ac	cting as	attorney at law on bel
of th	ne claimant signing above, an uld be mailed to me at the ad			d by law to be ma	iled by the dire	ctor to ti	ne claimant signing ab
Sig	nature	÷ (0		2			
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# **EXHIBIT C**

ROSHOLT, ROBERTSON & TUCKER

Chartered .
ATTORNEYS AT LAW

Twin Falls Office 142 3rd Ave. North P.O. BOX 1906 TWIN FALLS, IDAHO 83303-1906 TELEPHONE (208) 734-0700 FAX (208) 736-0041 Bolse Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83/01-2139
TELEPHONE (208) 336-0700
FAX (208) 344-634

October 23, 1996

Idaho Department of Water Resources 1301 North Orchard Statehouse Mail Boise, ID 83720

HAND DELIVERED TO SOUTHERN REGION IDAHO DEPARTMENT OF WATER RESOURCES TWIN FALLS, IDAHO

ATTN:

JOHN A. ROSHOLT

GARY D. SLETTE JERRY V. JENSEN

BRUCE M. SMITH

JOHN K. SIMPSON PATRICK D. MADIGAN

TIMOTHY J. STOVER

NORMAN M. SEMANKO

J. EVAN ROBERTSON JAMES C. TLICKER

Karl Dreher, Director

Dave Tuthill, Adjudication Bureau Chief

#### Gentlemen:

Please find enclosed the following water right application and adjudication claims which we have presented for filing on this date on behalf of the Idaho Power Company:

- 1) Application for Permit 7,850 cfs for power purposes @ American Falls:
- 2) Notice of Claim 1,400 cfs for power purposes @ American Falls;
- 3) Notice of Claim 6,000 cfs for power purposes @ American Falls;
- 4) Notice of Claim 2,000 cfs for power purposes @ American Falls;
- 5) Notice of Claim 136 cfs for power purposes @ American Falls; and
- 6) Notice of Claim 3,500 cfs for power purposes @ Bliss power plant.

These filings are being made to supplement previous filings by the Company based upon the results of hydraulic capacity tests completed by the Company at various power facilities. These capacity tests were initiated in an effort to verify the previous SRBA claims filed by the Company. Tests at all of the Company's facilities have not been completed and further amended or supplementary filings may be forthcoming.

Idaho Department of Water Resources Aun: Karl Dreher & Dave Tuthill October 23, 1996 Pare 1

The filings at American Falls are further complicated, and in many respects necessitated, by the history of the development of the American Falls Reservoir and the adjudication filings for that facility made by the United States. Our review of pertinent records indicates that prior to the construction of the first American Falls Dam in 1927, the Company owned and operated three small power plants at American Falls, the West Side, Island, and East Side Plants. The diversion structure at the East Side Plant was capable of diverting 6,000 cfs in 1920. Permit No. 4168 was licensed in 1920 for 1,400 cfs, and Permit No. 14067 in 1924 for 4,600 cfs to make up the difference. In 1921, the Company filed an application to appropriate an additional 1,200 cfs for power purposes (Permit No. 15201/01-2041), along with an application for a permit to store 300,000 AF of water at the American Falls site. (Permit No. R-273/01-2065.) In each case, permits were subsequently issued to the Company.

About that same time, the Bureau of Reclamation became interested in the American Falls area as a reservoir site for the Minidoka Project. On June 15, 1923, the United States and the Company entered into a contract by which the United States acquired a portion of the Company's land and the water rights for the development of the American Falls site (The actual deed is dated April 13, 1926). This included the West Side and Island power plants. The Company retained the East Side Plant. The 1923 contract provided, among other things, that the Company was to acquire 45,000 AF of primary storage and 255,000 AF of "secondary storage" along with the right to use the water discharged from the dam for power production in the East Side Plant. The East Side power plant was not connected to the dam, so it made no use of the extra head created by the impoundment.

With the construction of the American Falls Dam in 1927, the capacity at the East Side Plant was increased to 9,000 cfs, and the corresponding the water rights consisted of the following:

1.	253 cfs	With a priority date of July 15, 1901, transferred from the West Side Plant to the East Side Plant on June 17, 1929, by transfer No. 464;
2.	611 cfs	With a priority date of August 1, 1901, transferred from the Island Plant to the East Side Plant on May 4, 1929, by transfer No. 463;

3. 1,400 cfs Permit No. 4168, with a priority date of September 3, 1908, licensed in 1920 to American Falls Power Company, No. 01-02017;

Idaho Department of Water Resource
Auto: Karl Dreher & Dave Tuthill
October 23, 1996
Page 2

4.	4,600 cfs	Permit No. 14067, with a priority dated of March 8, 1919, licensed in 1924, No. 01-02032;
5.	2,000 cfs	Permit No. 16635, with a priority dated of October 15, 1926, licensed in 1971, No. 01-02046;
	8,864 cfs	TOTAL

The Company has previously filed adjudication claims on two of the licensed rights, Nos. 4 and 5 above (Water Right Nos. 01-02032 and 01-02046). Adjudication claims for Nos. 1 and 2 (the 1901 rights), No. 3 (No. 01-02017) along with a beneficial use claim for the 136 cfs necessary to bring the total water rights at the facility to 9,000 cfs are part of the current filing.<sup>1</sup>

Permit Nos. 01-2041 and 01-2065, the permits issued to the Company for the 1200 cfs flow right and 300,000 AF storage right, respectively, were never licensed. In 1971, the Department of Water Administration (DWA) gave to the Company notice of its intention to cancel each of those permits for non-development. The Company opposed the cancellation based on provisions in the 1923 Contract, contending that the Company reserved its water rights at the American Falls site. The 1923 Contract, immediately following the provision transferring the Company's water rights to the U.S., provided:

But it is expressly agreed and understood that the water rights and rights to the use of water which it is herein agreed that the Company shall have are reserved out of its existing appropriations and rights as independent rights under its own filings and appropriations and of the dates of priority to which the Company is entitled under such appropriations and are not to be considered as mere contract rights under contract with the United States. (1923 Contract, para 9(d), at p. 11)

Despite that language, the DWA decided that both permits should be canceled. In his written decision, the then director, R. Keith Higginson, stated:

After reviewing the files of the Department and the answer of the Idaho Power Company, the Director finds that the rights established by the Idaho Power Company, by reason of Permit Nos. 01-2041 and 01-2065, have been merged with rights granted the United States of America and that by

You will note that the filings for the rights listed as Nos. 1 & 2 claim are for 6,000 cfs and 2,000 cfs, respectively. Although the Company only transferred the amounts listed above (253 and 611 cfs) to the East Side Plant, the balance of each right is included in the respective claim based on Judge Hurlbutt's recent decision in Basin-Wide # 10.

Idaha Deparament of Water Resources Asm: Karl Dreher & Dave Tuthili October 23, 1996 Page 4

reason of contracts and agreements entered into between the Company and the United States of America, Bureau of Reclamation, those rights are held in trust for use by the Company under the water rights of the United States at American Falls Reservoir.

The Director further finds that since the Company's rights to water at American Falls Dam and Reservoir are already covered by reason of licenses issued to the United States of America, under Permit Nos. R-269 and 4168<sup>2</sup> and contracts between the Company and the United States of America, that Permit Nos. 01-2041 and 01-2065 are duplicate and should be canceled. The Company has failed to submit proof that it has constructed the necessary works to divert the water and apply it to beneficial use. (emphasis added)

In 1972, storage behind the American Falls Dam was restricted for safety reasons. This led to a non-governmental replacement program whereby the Company guaranteed bonds issued by the American Falls Reservoir District (AFRD) for reconstruction of the Dam in exchange for the right to connect its power plant directly to the Dam and use the water released from the Dam to generate power. On March 31, 1976 a contract (the "Government Contract") was entered into between AFRD and the United States. In that contract the United States acknowledged the existence of a "falling water contract" between AFRD and the Company and agreed that the Company could use the water released from the Dam, subject to the other provisions of the contract, for power generation purposes. (Government Contract, Art 18, p. 6) The Government Contract, and the use of the falling water, was authorized by the American Falls Enabling Act of December 28, 1973 (P.L. 93-206, 87 Stat. 904). Pursuant to the Government Contract and the Act, the AFRD, as the constructing agency, and the Company entered into a Falling Water Contract which authorized the Company to utilize the water discharged from the Dam in accordance with the Government Contract. (Falling Water Contract, Sec. 3.1, p. 13.) Also on March 31, 1976, the United States, AFRD and the Company entered into a Spaceholder Contract which provided:

Nothing herein shall in any way alter or change the present proportion of the storage rights of the spaceholder, and this Spaceholder Contract and the American Falls Replacement Dam Program constitute a reaffirmation by the United States of the rights of the spaceholder under the Existing Spaceholder Contract, except as modified by this Spaceholder Contract as authorized in the Act of December 28, 1973, and the Government Contract. The provisions of

<sup>&</sup>lt;sup>2</sup>. Permit No. 4168 for 1400 cfs was licensed to American Falls Power Company in 1920 and is one of the SRBA claims being contemporaneously filed by the Company. R-269 is current license #01-02064, held by the U.S., for 1.8 MAF of storage for irrigation and power purposes. The U.S. has filed an adjudication claim for this water right but did not include power as a purpose of use. See SRBA clm. # A01-02064.

Idaha Department of Water Resources Am: Karl Drohet & Dave Tushill October 23, 1996 Page 5

the Existing Spaceholder Contract shall in all respects remain in full force and effect except that the provisions of this Spaceholder Contract with respect to the Replacement Dam, including but not limited to the operation and maintenance thereof and the distribution of water therefrom, shall prevail over the provisions of the Existing Spaceholder Contract wherever and to whatever extent the provisions of the Existing Spaceholder Contract are in conflict with the provisions of this Spaceholder Contract. (Spaceholder Contract, sec., 19, p. 6) [the 1923 Contract is identified as the "Existing Spaceholder Contract" in Part 1, sec. 18]

The spaceholder acknowledges that the water storage rights evidenced by permits, licenses and court decrees for the Existing Dam are held in the name of the United States and by this Spaceholder Contract the water rights are reaffirmed and neither the United States, the Constructing Agency, nor the spaceholders are required to make additional filings for the Replacement Dam. (Spaceholder Contract, sec. 49, p. 23)

Despite the decision by the DWA in 1971 that the "Company's rights to water at American Falls Dam and Reservoir are already covered by reason of licenses issued to the United States of America . . . ", questions remain as to whether additional SRBA filings by the Company are necessary to protect the Company's power rights at American Falls. Notwithstanding the 1971 decision, the contracts entered into in conjunction with the 1976 Dam Replacement Project reaffirmed the 1923 Contract and granted the Company the right to use water released from the Replacement Dam for purposes of power generation. While our review indicates that the United States holds various water rights at American Falls, only two have stated uses which include power generation. These are Water Rights Nos. 01-02064 (previously Permit No. R-269) and Water Right No. 01-04052, for a 1.8 MAF and 115,000 AF, respectively. Interestingly, the adjudication claim filed by the United States on the oldest power right, A01-02064, does not include power as a stated use. The later priority right, No. A01-04052, for 115,000 AF, does include power and contains the following under the remarks section: "Water furnished to private company for power generation." The amount of storage claimed under this right is significantly less than the 300,000 AF (45,000 primary and 255,000 secondary) of storage rights held by the Company under contract. Additionally, the U.S. has not claimed any flow rights for power purposes.

All of this further confuses and complicates the filings concerning American Falls. We are hopeful that with filing of the referenced claims that these issues can be addressed and resolved in the appropriate forum.

Finally, we are also enclosing the necessary fees for the referenced filings. The Company has previously paid the variable water use fees pursuant to I.C. § 42-1414(1)(b)(ii) and, as such, the enclosed fees for the adjudication claims are remitted under subsection

Idaho Department of Water Resource: Aun: Karl Dreher & Dave Tunkli October 23, 1996 Page 6

(1)(a) of that section. The filing fees for the water right application for American Falls are being conditionally paid. If it is determined that the water that is the subject of that application is not required, either based on the enclosed adjudication claims or the contract rights held by the Company, we would expect a remittance of the enclosed fees. In that regard, perhaps it would be appropriate to delay the processing of that application until the issues raised by the adjudication claims filed by both the Company and the U.S. at American Falls are resolved.

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We will happy to discuss issues relating to any of the enclosed filings with you at your convenience.

Very truly yours,

JAMES C. TUCKER

Encls.

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# **EXHIBIT D**

# RECEIVED OCT 1 1 2001

April 22, 1971

Tier Pornalt Nos. 01-2041 and 01-2005

Mr. James E. Brace Vice-Provident and Ecerciary Maho, Your r Company Date 7.3 Dinge, Elshe 38707

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Ryon lave any questions, plante feet free to confact our allies.

Very truly yours,

N. KUIST PROGINGG Director

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Inclosure

ec. U.S. Bureau of Fociamation

RECEIVED OCT 1 5 2004

#### BEFORE THE DIRECTOR

OF THE

#### IDAHO DEPARTMENT OF WATER ADMINISTRATION

In the Matter of Pormit Nos. 01-2041 and 01-2065 in the mains of IDAHO POWER COMPANY

MEMORANDUM DECISION

On March 17, 1921, Idaho Power Company submitted Applications to the Idaho Department of Reclamation (remained Idaho Department of Water Administration) requesting authority to divert 1200 cubic feet per second of water and to store 300,000 acro-feet of water to be used for power purposes. The water was to be diverted and stored in the S2S2 Section 30, Township 7 South, Range 51 East, B.M., in Power County for use at the proposed reservoir site and at several sites downstream. Pursuant to these Applications, Permit Nos. R-273/01-2065 and 15201/01-2041 were issued by the Department.

On June 20, 1931, the applicant submitted Proofs of Completion of Works claiming that the works had been complete as required under the provisions of Permits 15201/01-2041 and R-273/01-2065. On September 29, 1932, the Department of Reclamation informed the permit holder that it intended to reject the Proofs of Completion of Works and refuse to issue a Certificate, since a Certificate of Completion of Works had previously been issued to the United States of America. Bureau of Reclamation, for the full capacity of the reservoir constructed at the proposed site. The Department further informed the Idaho Power Company that it appeared that the Company rights to divert and store water at that location had been waived and compensated for by contractual agreement between the Company and the United States.

In July of 1967, the Department requested that the Company review the matter and give comments prior to action being taken to cancel the permits. Correspondence was received from the Company, on November 9, 1967, asking the Department to issue the required Certificate to complete the permits and contending that Licenses should be issued.

On October 1, 1970, an Order to Show Cause why the permits chould not be cancelled was issued to Idaho Power Company by the Department. On December 1, 1970, a brief was timely submitted by the Idaho Power Company setting forth, among other things, the terms and conditions of agreements between the Company and the United States.

### STATE OF IDAHO DEPARTMENT OF WATER ADMINISTRATION

Boise, Idaho 83707 (208) 384-2215



R. Kelth Higginson

Water Rights Administration Water Resource Investigations Dam and Reservoir Safety Water Well Drilling Flood Plain Management Irrigation and Flood Control Districts

IN THE MATTER OF CANCELLATION OF PERMIT )
TO APPROPRIATE THE PUBLIC WATERS OF THE )
STATE OF IDAHO NO. R-273/01-2065 )
IN THE NAME OF Idaho Power Company

ORDER OF CANCELLATION

WHEREAS, the permit holder has failed to submit adequate proof of ; and,
Luchus Tuno 21 1931
notice was sent to the horse
permit to appear before the Director of the Department of Water Administration
permit to appear before the precent of the cause why said permit should not be
on or before December 1, 1970 to show cause why said permit should not be
cancelled; and,
WHEREAS, the holder of sale relegante cause why such permit should not
ments of said permit and has not shown adequate cause why such permit should not
be cancelled:  IT IS THEREFORE ORDERED and Permit R-273/01-2065 is hereby CANCELLED.
IT IS TREREFORE ORDERED and Terrat
Dated this 22nd day of April 19 71

R. KEITH PICCINSON

Director

### STATE OF IDAHO DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Annex 2 Boise, Idaho 83707 (208) 384-2215



R. Keith Higginson Director

Water Rights Administration Water Resource Investigations Dam and Reservoir Safety Dam and Reservoir Safety
Water Wall Drilling
Flood Plain Management
Intigation and
Flood Control Districts

IN THE MATTER OF CANCELLATION OF PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDANO NO. 15201/01-2041 IN THE NAME OF Idaho Power Company

ORDER OF CANCELLATION

WHEREAS, the permit holder has failed to <u>submit adequate proof of</u> completion of works due June 21, 1931  WHEREAS, on <u>October 1, 1970</u> notice was sent to the holder of said  permit to appear before the Director of the Department of Water Administration  on or before <u>December 1, 1970</u> to show cause why said permit should not be
cancelled; and,  WHERFAS, the holder of said permit has failed to comply with the require- where we will be a said permit and has not shown adequate cause why such permit should not
be cancelled.  IT IS THEREFORE ORDERED and Fermit 15201/01-2041 is hereby CANCELLED.  Dated this 22nd day of April , 19 71

R. KEITH HIGGINSON

Director

### BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER ADMINISTRATION OF THE

STATE OF IDAHO

IN THE MATTER OF PERMITS
NO 15201/01-2041 and
R-273/01-2065 in the name
of IDAHO POWER COMPANY

ANSWER TO ORDER TO SHOW CAUSE

COMES NOW, IDAHO POWER COMPANY (hereinafter called "Company") and for its answer to order to Show Cause as to why Proof of Completion of Works should not be rejected and Permits 15201/01-2041 and R-273/01-2065 cancelled, states and alleges as follows:

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That the Company, or its predecessors, in 1901 commenced construction of generating plant at American Falls, Idaho, known as the "Island Plant." As power requirements increased, this plant was supplemented by construction at American Falls of the "West Side Plant" and, subsequently, the "East Side Plant."

That prior to June 15, 1923, the Company owned and operated a dam and the three power plants with a total of 4,040 KW generating capacity at American Falls. These plants provided the Company's entire power generation for the American Falls-Blackfoot-Pocatello area, and were a source of large potential development to serve the future power needs of southeastern Idaho.

That the Power Company was preparing to enlarge its dam and generating stations to meet the rapidly growing power demand. Its plans included a storage reservoir which would not only make possible the installation of additional power capacity at American Falls to meet local needs, but also would have served to increase the firm capacity of its downstream plants at Shoshone, Lower Salmon and Swan Falls.

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That the Company had made or acquired various filings and/or rights on waters of the Snake River for storage and use

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of such water for power production at its existing plants and also for its proposed plant expansion, as follows:

- (a) Appropriation under Water Location by Andrew J Tarbet for 6000 cfs of the waters of Snake River on July 15, 1901, recorded in Blaine County, Idaho, in Book 4 of Water Rights at Page 266.
- (b) Appropriation under Water Location by J E Brady for 2000 cfs of the waters of Snake River on August 1, 1901, recorded in Blaine County, Idaho, in Book 4 of Water Rights at Page 265.
- (c) Permit No 4168 for 6000 cfs of the waters of Snake River, issued by the State Engineer of the State of Idaho to American Falls Power Company on Application filed September 3, 1908.
- (d) Permit No 14067 for 4600 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed April 7, 1919.
- (e) Permit No 13947 for 1500 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to E C Kiersted on Application filed December 26, 1918.
- (f) Permit No 14909 for 500 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed June 25, 1920.
- (g) Appropriation under Water Location by I B Perrine for 1000 cfs of the waters of Snake River on November 1, 1901, recorded in Lincoln County, Idaho, in Book 1 of Water Rights at Page 241.
- (h) Appropriation under Water Location by Arturus Z Conrad for 1000 cfs of the waters of Snake River on September 13. 1902, recorded in Lincoln County, Idaho, in Book 1 of Water Rights at Page 251.
- (i) Permit No 14881 for 1000 crs of the waters of. Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed August 9, 1920.
- (j) Permit No 13948 for 5000 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to E C Kiersted on Application filed December 26, 1918.
- (k) Permit No 3685 for 6000 cfs of the waters of Snake River, issued by the State Engineer of the State of Idaho to Fentress Hill on Application filed May 11, 1908.
- (1) Appropriation under Water Location by Joseph H Hutchinson for 10000 cfs of the waters of Snake River on January 17, 1900, recorded in Owyhee County, Idaho, in Book 3 of Water Rights and Millsites at Page 750.

- (m) Appropriation under Water Location by Joseph H Hutchinson for 10000 cfs of the waters of Snake River on May 4, 1900, recorded in Owyhee County, Idaho, in Book 3 of Water Rights and Millsites at Page 761.
- (n) Permit No 14362 for 4000 cfs of the waters of Snake River, issued by Department of Reclamation of the State of Idaho to Idaho Power Company on Application filed July 29, 1919.
- (o) Permit No 15201 by Idaho Power Company according to Application No 21476 filed on March 17, 1921.
- (p) Permit No R-273 by Idaho Power Company for storage of 300,000 acre feet per annum of the waters of Snake River filed on March 11, 1921 and approved on June 28, 1921.

#### III

This was a period of rapid growth in southern Idaho, and the need for additional water for irrigation development was increasing. American Falls was selected by the Bureau of Reclamation as an ideal site for a large and economical reservoir for the storage of water for irrigation use. The United States of America, acting through its Secretary of the Interior, and pursuant to appropriate acts of Congress determined to build a large irrigation storage reservoir at American Falls, using as a part of its reservoir land owned by the Company. This reservoir would require the destruction of two of the Company's plants (West Side and Island plants) and would prevent the Company from developing its own storage reservoir for power production. The Company already owned much of the necessary lands and flooding easements, which it had purchased and obtained for its own reservoir development.

IV

That in order to enable the United States of America to construct the irrigation storage reservoir, the United States and the Company developed a plan under which the Company reserved its existing water rights, and conveyed the necessary portions of its real property and easements to the United States. The Company

retained its East Side generating station with its appurtenant diversion dam, and was guaranteed by the United States the right to the amount and time of use of its reserved water rights. To effectuate this plan a contract was entered into between the United States and the Company on the 15th day of June, 1923, a copy of which is hereto attached as Exhibit A and is hereby made a part of this answer.

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That under the said contract the Company's rights to storage in the reservoir to be constructed by the United States to the extent of the 300,000 acre feet covered by Permit No R-273 issued by the Commissioner of Reclamation of the State of Idaho under the date of June 28, 1921, were preserved, defined and specifically provided for as follows:

"In part consideration for the rights and property to be conveyed to the United States by the Company, and as a part of the cost of the proposed development at American Falls the United States grants to the company and the company shall be entitled to the perpetual use of 45,000 acre-feet of storage capacity in the reservoir to be constructed by the United States, such capacity to be for storing the water reserved to the company, and the water referred to in the last sentence of Paragraph 10, the company's right to such storage capacity to be on an equal basis in all respects, except as otherwise provided herein, with other primary storage capacity rights in the reservoir, as defined in the contracts between the United States and the Irrigation Companies and Districts cooperating with the United States in the construction of said reservoir, a form of which contract is attached hereto and marked Exhibit 'C'." (paragraph 16, pp 17 and 18, Exhibit A)

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"Between October 1st of any year and June 10th of the following year, the company shall have and is hereby granted for the purpose of regulating and controlling the water reserved to the company under Paragraph 19 hereof, and the water which may be acquired under the last sentence of Paragraph 10, a secondary right to use not to exceed 255,000 acre-feet of storage capacity in the reservoir when such capacity is not then required and not being used by the owners of irrigation rights to the use of such capacity, but shall have no further right to use any part of said 255,000

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acre-feet of capacity or any water stored therein after the reservoir is first filled each season, and the company shall in any event release on April 1st of each year all right and claim to such capacity and water stored therein, except 60,000 acre-feet, and shall release all right and claim to the remainder, if any, on June 10th of each year." (paragraph 18, p 19, Exhibit A)

That said contract specifically provided that the Company was not surrendering, or in any way disposing of its existing water rights but was only permitting the United States to use them in connection with its American Falls Reservoir, subject, however, to the Company's reserved rights as follows:

"WHEREAS the company has at American Falls water filings prior to the American Falls filings of the United States sufficient to embrace the entire amount of water reserved to the company under this contract." (paragraph 6, pp 2 and 3, Exhibit A)

"(d) All the company's water rights, appropriations water filings and permits, at American Falls, or used or intended to be used in connection with the company's power plants and proposed plants at American Falls, except the rights, whether primary or tertiary, expressly reserved to the company, as hereinafter set out. The water rights of the company transferred to the United States for use for power purposes shall be considered as impressed with a right in the United States to change the use of such water from power to irrigation or to store the same for irrigation whenever the Secretary of Interior shall decide that such water is required for irrigation purposes. But it is expressly agreed and understood that the water rights and rights to the use of water which it is herein agreed that the Company shall have are reserved out of its existing appropriations and rights as Independent rights under its own fillings and appropriations and of the dates of priority to which the Company is entitled under such appropriations and are not to be considered as mere contract rights under contract with the United States." (paragraph 9(d), p 11, Exhibit A)

"It is the intent of this agreement that all power rights at American Falls except those granted to the United States herein shall be reserved to the company and that the deeds and conveyances by the company to the United States may contain a reservation in favor of the company of the rights reserved to it under the provisions of this agreement." (paragraph 30, p 30, Exhibit A)

That as a part of the plan for the American Falls reservoir the United States had applied for and received from the Commissioner of Reclamation of the State of Idaho, under the date of March 30, 1921, Permit No R-269 for the storage of 1,700,000 acre-feet in said reservoir and Permit No 15134 for direct diversion of 8,000 second feet in connection therewith.

rights described in paragraph II, supra, were known to the parties at the time of the execution of the contract of June 15, 1923 (Exhibit A hereto), and the contract provisions referred to in paragraphs IV and V, supra, for protecting the Company's right to 300,000 acre-feet of storage covered by its Permit R-273 contemplated that said storage water was included in and formed a part of Permit R-269 and would be provided to the Company from waters stored under Permit R-269.

That in fact, while all the Company's reserved rights were considered in the contract (Exhibit A hereto), the contract specifically provided that said rights were reserved and were "\* \* \* not to be considered as mere contract rights \* \* \*."

VII

That the said reservoir was subsequently constructed and thereafter the United States made all necessary proofs required by the laws of Idaho and proper licenses have been issued to the Secretary of the Interior for the waters covered by Permit Nos R-269 and 15134.

#### VIII

That in addition to the aforementioned contract with the Company, the Secretary of the Interior entered into numerous contracts with irrigation districts, canal companies and individuals wherein he agreed to make available to them for irrigation use on lands irrigated by them, specific quantities of storage space and

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the waters annually stored therein, and that at the present time there are such contracts outstanding covering substantially all of the capacity of said reservoir.

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That by operation of law the Secretary of the Interior holds the water available in American Falls Reservoir under Permit Nos R-269 and 15134 as trustee for the Company and all other contract holders. The Company has continuously applied to a beneficial use its rights in said stored water, as have all other contract holders; and the Company and all other such contract holders are the equitable owners of the right to so use these waters.

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That a decree was entered in the District Court of the United States for the District of Idaho, Eastern Division, on June 25, 1929, in an action entitled Woodville Canal Co, Plaintiff, versus Clark and Edwards Canal and Irrigation Co, et al, Defendants, adjudicating water rights in Snake River at and above Milner Dam, including those at American Falls. That the numerous parties to said action included many of the water users on the river who claimed rights in American Falls Reservoir, together with the Secretary of the Interior. In such action a stipulation was entered into which was incorporated in the decree which read in part as follows:

"It is further stipulated and agreed that there shall be decreed in the above entitled cause of action, to the Secretary of the Interior of the United States, and his successors in office, for use upon the various projects which have heretofore or may hereafter become entitled to the same by reason of contracts with the United States therefor, the water filed upon by the United States in connection with the construction of the American Falls Reservoir under permit number 15134, and reservoir permit number R-269, under date of priority of March 30th, 1921, the amount of water to be decreed to the Secretary of the Interior of the United States and his successor in office for such use under said date of priority of March 30th, 1921, to be One Million Seven Hundred Thousand (1,700,000) acre-feet per annum for storage in the

American Falls Reservoir and Eight Thousand (8,000) second feet for direct diversion. It is understood and agreed that paragraph two hereof does not apply to the said rights of priority of March 30, 1921, provided for in this paragraph or the rights decreed in the Foster and Rexburg decrees."

"It is stipulated and agreed that the rights of contract holders and any others beneficially interested, now or hereafter claiming or having storage reservoir rights in American Falls Reservoir shall not be affected or determined by the decree to be entered in this action, as to the use to be made of the waters decreed, under such decree, to the Secretary of the Interior under permits described in paragraph No. 4, of this stipulation, the same being permits No. 15134 and R-269."

and concerning which the decree provided:

"Now therefore, the said stipulation is hereby approved and confirmed by the Court and adopted as a part of this decree, \* \* \*."

WHEREFORE, the Company hereby requests that the Director of the Department of Water Administration enter an order rinding (a) that all or the rights of the Company covered by Permit Nos R-273 and 15502 have been merged into rights granted to the Secretary of the Interior in Permit Nos R-268 and 15134; (b) that the Secretary of the Interior holds and maintains the rights under said permits as trustee for the Company of all of the rights covered by Permit Nos R-273 and 15502; and (c) that in accordance therewith no further action need be taken with respect to Permit Nos R-273 and 15502.

Dated this 1st day of December, 1970.

R P PARRY Twin Falls, Idaho

JAMES E BRUCE Boise, Idaho

Attorneys for Idaho Power Company